

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.) Civil Action No. _____
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)
 ROHM AND HAAS CHEMICALS LLC,) COMPLAINT
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 Defendant.)
)

NATURE OF THE ACTION

- 1 -

Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001–11050 (“EPCRA”). The violations alleged in this complaint occurred or are occurring at a chemical-manufacturing facility in Louisville, Kentucky that was owned at all times pertinent to this action by Defendant or by its parent corporation, the Rohm and Haas Company.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); and Section 325 of EPCRA, 42 U.S.C. §§ 11045(b)(3), and over the Parties.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); and Section 325 of EPCRA, 42 U.S.C. § 11045(b)(3), because the violations alleged in this complaint occurred or are occurring at a facility located within this District.

AUTHORITY AND NOTICE

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the Clean Air Act, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

5. The United States has provided notice of the commencement of this action to the Commonwealth of Kentucky (“Kentucky”) as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Defendant is a Delaware limited liability corporation and is a wholly owned subsidiary of the Rohm and Haas Company.

7. Defendant is a “person” within the meanings of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

STATUTORY AND REGULATORY BACKGROUND

8. Kentucky’s State Implementation Plan (“SIP”), adopted pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, has received EPA approval. Pursuant to the Kentucky SIP, the Louisville Metro Air Pollution Control District (“APCD”) Board is the regulatory authority for air pollution control in Louisville/Jefferson County. APCD Regulation 6.43 governing Volatile Organic Compound Reduction Requirements was approved by EPA and incorporated into the Kentucky SIP on November 23, 2001, 66 Fed. Reg. 53686 (Oct. 23, 2001).

9. EPA has promulgated rules for Hazardous Air Pollutants at 40 C.F.R. Part 63 and rules for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82 in accordance with the CAA, 42 U.S.C. §§ 7411–12, 7671(g).

10. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted Kentucky final authorization to administer its hazardous waste management program in lieu of certain portions of Subchapter III of RCRA, 42 U.S.C. §§ 6921-6939b on January 31, 1985, 50 Fed. Reg. 2550 (January 17, 1985). State authority for the Kentucky hazardous waste program is set out at Chapter 224, Subchapter 46 of the Kentucky Revised Statutes, KRS 224.46, with implementing regulations found at Title 401, Chapters 30 *et seq.* of the Kentucky Administrative Regulations, 401 KAR § 30:005 *et seq.*

11. The provisions of the authorized Kentucky hazardous waste management program, and hazardous waste permits issued in accordance with the State program, are federally enforceable by EPA upon notice to the State, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. EPA retains exclusive authority pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), to enforce those portions of the RCRA program added by the Hazardous and Solid Waste Amendments of 1984, and any regulations made pursuant thereto, until a State program is authorized with respect to those requirements.

13. CERCLA's Hazardous Substance Release Notification Requirements, found at Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), require immediate notification of the National Response Center ("NRC") in the event of certain hazardous substance releases.

14. EPCRA's Emergency Notification and Followup Emergency Notice requirements, found at Section 304 of EPCRA, 42 U.S.C. § 11004(a)(3)(A), require immediate notification of local and state authorities in the event of certain hazardous substance releases.

GENERAL ALLEGATIONS

15. Rohm and Haas Company owned and operated the chemical manufacturing facility located at 4300 Camp Ground Road in Louisville, Jefferson County, Kentucky (the "Louisville Plant") through December 31, 2005. Rohm and Haas Company bought the property from the United States in 1960, and transformed it into a facility that manufactures polymers from butadiene, styrene, third vent monomer, methyl methacrylate, ethyl acrylate, and butyl acrylate, and distills crude methyl methacrylate and third vent monomer.

16. The Louisville Plant employs four primary processes in its manufacturing and distillation operations. The first is the acryloid coatings ("KAC") process, which produces thermoplastic and thermoset acrylic resins for use in industrial finishing products and the glossy part of solvent-based inks and powder coatings. The second is

the acrylic emulsion ("KU") process, which produces water-based acrylic resins for use in water-based paints, adhesives, inks and paper coatings. The third is the distillation ("KB") process, in which crude methyl methacrylate and crude third vent monomer are purified. The fourth is the plastic additives ("KV") process, in which a variety of plastic additive resins such as acrylic impact modifiers, methyl methacrylate, butadiene, styrene, MBS impact modifiers and plastic processing aids are produced.

17. Pursuant to a December 31, 2005 Contribution and Assumption Agreement, Rohm and Haas Company transferred ownership and operation of the Louisville Plant, along with all of the Plant's operating permits, to Defendant. Under the same agreement, Defendant assumed all legal liabilities stemming from Rohm and Haas Company's past ownership and operation of the Louisville Plant. Defendant has owned and operated the Louisville Plant since December 31, 2005.

18. The Louisville Plant operates under RCRA Permit number KYD-006-390-017, which is comprised of two portions: a Hazardous Waste Management Permit issued by the Kentucky Natural Resources and Environmental Protection Cabinet Department for Environmental Protection (the "Kentucky RCRA Permit"), and a permit issued by EPA to cover RCRA provisions that Kentucky has not been authorized to administer (the "EPA RCRA Permit"). The Kentucky and EPA RCRA Permits went into effect January 30, 1999, and expire in January 2009.

19. EPA's National Enforcement Investigation Center conducted an inspection of the Louisville Plant July 6–15, 2004 (the "NEIC Inspection"). The NEIC Inspection uncovered an array of violations of the CAA, RCRA, CERCLA, and EPCRA and related state and federal regulations, which are further elaborated in this complaint.

FIRST CLAIM FOR RELIEF

(Violations of CAA State Implementation Plan Requirements: Tank 58108)

20. Paragraphs 1 through 19 are incorporated herein.

21. APCD Regulation 6.43, Section 18.2 requires that Tank 58108 at the Louisville Plant comply with the requirements for volatile organic liquid storage vessels set forth in 40 C.F.R. § 60.112b(a)(1).

22. 40 C.F.R. § 60.112b(a)(1)(ii)(B) requires that storage vessels with an internal floating roof be equipped with a closure device consisting of two seals that each form a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof.

23. The owner or operator of a storage vessel governed by 40 C.F.R. § 60.112b(a) is also subject to 40 C.F.R. § 60.113b. 40 C.F.R. §§ 60.113b(a)(2) requires that the storage vessel be repaired or emptied and removed from service within 45 days if annual inspections reveal that a seal is detached or there are holes or tears in the seal fabric.

24. Tank 58108 was used to store methyl methacrylate at the Louisville Plant at all times pertinent to this action. Defendant was the “owner” and “operator” of Tank 58108 within the meaning of 40 C.F.R. § 60.113b at all times pertinent to this action.

25. On July 7, 2003, Defendant discovered that a seal on the internal roof of Tank 58108 had deteriorated and detached.

26. Defendant did not repair the deteriorated seal or empty and remove Tank 58108 from service until August 2004 or later.

27. Each day that Defendant failed to repair or empty and remove Tank 58108 from service within 45 days of discovering that the seal of the internal floating roof was detached constitutes a separate violation of APCD Regulation 6.43, Section 18.2, as incorporated into the Kentucky SIP.

28. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

SECOND CLAIM FOR RELIEF
(Failure to Maintain CAA Hazardous Air Pollutant Emissions Records:
KV3K Process Unit)

29. Paragraphs 1 through 19 are incorporated herein.

30. Pursuant to the National Emission Standards for Hazardous Air Pollutant Emissions for Group IV Polymers and Resins at 40 C.F.R. § 63.162(c), the owner or operator of an affected source must identify each piece of equipment within that source that is subject to the regulations on the prevention and monitoring of equipment leaks at 40 C.F.R. Part 63, Subpart H (“Subpart H”) in such a way that it can readily be distinguished from equipment that is not subject to Subpart H.

31. At all times pertinent to this action, the Louisville Plant was a “major source” of hazardous air pollutant emissions within the meaning of 40 C.F.R. § 63.2.

32. At all times pertinent to this action, the KV3K process unit was an “affected source” within the meaning of 40 C.F.R. § 63.1310(a)(2).

33. At all times pertinent to this action, Defendant was the “owner” and “operator” of the KV3K process unit within the meaning of 40 C.F.R. § 63.162(c).

34. At the time of the NEIC Inspection, pieces of equipment within the KV3K process unit that are subject to Subpart H were not adequately identified.

35. Each day that Defendant failed to adequately identify all pieces of equipment within the KV3K process unit that are subject to Subpart H constitutes a separate violation of 40 C.F.R. § 63.162(c).

36. Pursuant to 40 C.F.R. § 63.181(b)(1)(i), the owner or operator of an affected source must also maintain a list of the identification numbers for all equipment within that source that is subject to Subpart H.

37. At the time of the NEIC Inspection, Defendant had not maintained and was not maintaining a complete list of the identification numbers for all equipment within the KV3K process unit that is subject to Subpart H.

38. Each day that Defendant failed to maintain a complete list of identification numbers for all equipment within the KV3K process unit that is subject to Subpart H constitutes a separate violation of 40 C.F.R. § 63.181(b)(1)(i).

39. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

THIRD CLAIM FOR RELIEF
(Violations of CAA Hazardous Air Pollutant Emissions Standards and
RCRA Air Emissions Standards: Tank 64250)

40. Paragraphs 1 through 19 are incorporated herein.

41. The CAA's National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Options, 40 C.F.R. Part 63, Subpart DD, require the owner or operator of an affected source to control air emissions from each off-site material management unit within that affected source pursuant to the requirements set forth in 40 C.F.R. § 63.683(b).

42. Tank 64250 is located at the Louisville Plant and is used to store spent solvent as part of Defendant's Acryloid Coating Process operation.

43. Defendant was the "owner" and "operator" of Tank 64250 within the meaning of 40 C.F.R. § 63.683(b) at all times pertinent to this action

44. Tank 64250 is an "off-site material management unit" that is part of an "affected source" within the meaning of 40 C.F.R. § 63.683(b). Under 40 C.F.R. § 63.685, Tank 64250 is therefore subject to the Tank Level 1 controls set forth at 40 C.F.R. §63.902.

45. Pursuant to the Tank Level 1 controls, 40 C.F.R. § 63.902(c)(2), the venting device affixed to Tank 64250 must operate with no detectable organic emissions, defined as less than 500 parts per million in 40 C.F.R. § 63.905(a)(9)(i), when in the closed position.

46. Kentucky has not received authorization from EPA to administer its hazardous waste management program in lieu of the federal RCRA provisions governing Air Emission Standards for Tanks, Surface Impoundments and Containers at Hazardous Waste Treatment, Storage and Disposal Facilities found at 40 C.F.R. Part 264, Subpart CC ("Subpart CC"). Accordingly, the regulations in Subpart CC, and permit requirements issued in accordance with those regulations, are enforceable by EPA in Kentucky.

47. Section III.C of the EPA RCRA Permit states generally that the permittee shall comply with all applicable requirements of Subpart CC. Under Section III.A.3.a of the EPA RCRA Permit, Subpart CC applies to all waste management units at the Louisville Plant identified in Appendix C, Table C-1 of the EPA RCRA Permit.

48. Tank 64250 is listed in Appendix C, Table C-1 of the EPA RCRA Permit as a hazardous waste storage tank subject to Tank Level 1 controls.

49. Tank 64250 is used to store spent solvents that qualify as hazardous wastes under 40 C.F.R. § 261.31, has a fixed roof and is affixed with a conservation vent, and is subject to the Tank Level 1 controls set forth at 40 C.F.R. § 264.1084(b)(1).

50. Pursuant to 40 C.F.R. § 264.1084(c)(3)(ii), a hazardous waste storage tank that is subject to Tank Level 1 controls, has a fixed roof and is affixed with a conservation vent must be designed so that the conservation vent operates with no detectable organic emissions when it is in the closed position. "No detectable organic emissions" is defined at 40 C.F.R. § 265.1084(d)(8) as a difference between background and instrument readings of less than 500 parts per million.

51. At the time of the NEIC Inspection, hydrocarbon emissions from the conservation vent on Tank 64250 were in excess of 500 parts per million.

52. Each day that Tank 64250 remained in operation with a venting device that emitted hydrocarbons in excess of the no detectable organic emissions limit of 500 parts per million is a separate violation of the CAA hazardous air pollutant emissions standards

set forth in 40 C.F.R. § 63.902(c)(2), and of Sections III.C and III.A.3.a of the EPA RCRA Permit. Each violation of the EPA RCRA Permit is a violation of RCRA under Section I.D.1 of the EPA RCRA Permit and 40 C.F.R. § 270.30(a).

53. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

FOURTH CLAIM FOR RELIEF
(Violations of RCRA Boiler and Industrial Furnace Monitoring Standards:
Boiler 100)

54. Paragraphs 1 through 19 are incorporated herein.

55. Kentucky has not received authorization from EPA to administer its hazardous waste management program in lieu of the federal RCRA provisions governing Hazardous Waste Burned in Boilers and Industrial Furnaces, found at 40 C.F.R. Part 266, Subpart H. Accordingly, the federal regulations in Subpart H, including 40 C.F.R. § 266.103(1)(ii), remain enforceable by EPA in Kentucky.

56. The owner or operator of a boiler or industrial furnace that is used to burn hazardous waste must, in accordance with 40 C.F.R. § 266.103(j)(1)(ii), monitor carbon monoxide on a continuous basis while burning hazardous waste.

57. On the following eight occasions in 2004, Defendant did not continuously monitor carbon monoxide levels while Boiler 100 was burning hazardous waste: January 2, February 9, February 11, May 3, May 19, June 6, June 8, and July 14.

58. Each instance in which Defendant failed to continuously monitor carbon monoxide levels while Boiler 100 was burning hazardous waste is a separate violation of 40 C.F.R. § 266.103(j)(1)(ii).

59. As provided in Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

FIFTH CLAIM FOR RELIEF
(Failure to Remove a Closed Hazardous Waste Accumulation Tank: Small Tank
Beside Boiler 100)

60. Paragraphs 1 through 19 are incorporated herein.

61. Kentucky has received authorization from EPA to administer its hazardous waste management program in lieu of the RCRA permitting requirements found at 40 C.F.R. Part 270.

62. Pursuant to 401 KAR § 32:030(5)(1)(a)(2), a generator of hazardous waste may accumulate hazardous waste in tanks on-site for 90 days or less without a permit so long as it complies with the tank regulations at 401 KAR § 35:190.

63. A “tank” is a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials and does not meet the definition of any other unit, and a “tank system” is a hazardous waste storage treatment tank and its associated ancillary equipment and containment system. 401 KAR § 35:005(273) and (274).

64. When a tank system is closed and will no longer be used, the owner or operator shall remove all waste residues, contaminated containment system components and structures and equipment contaminated with waste, and manage them as hazardous waste. 401 KAR § 35:190(8).

65. In December 2003 or January 2004 Defendant stopped utilizing and tagged as “out of service” a small tank (the “Tank”) which had been used to collect waste drained from Boiler 100's burner nozzles.

66. At the time of the NEIC Inspection all waste residue had not been removed from the Tank and the Tank, which was a contaminated system component and/or a

structure or piece of equipment contaminated with waste, had not been removed from the site.

67. The Tank was not removed from the site until April 2005.

68. Each day following closure of the Tank on which Defendant failed to remove all waste residues, contaminated containment system components and structures and equipment contaminated with waste is a separate violation of 401 KAR § 35:190(8).

69. Violations of 401 KAR § 35:190(8) are enforceable by EPA under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

70. As provided in Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

SIXTH CLAIM FOR RELIEF

(Storage of Hazardous Waste Without a RCRA Permit: Small Container Beside Boiler 100)

71. Paragraphs 1 through 19 are incorporated herein.

72. Kentucky has received authorization from EPA to administer its hazardous waste management program in lieu of the RCRA permitting requirements found at 40 C.F.R. Part 270.

73. Storage of hazardous waste without a permit is a violation of 401 KAR § 38:010(1)(2). "Storage" is defined at KRS § 224.01-010(28) as containment of wastes on a temporary or permanent basis such that the wastes are not discharged into the environment.

74. A generator of hazardous waste may accumulate hazardous waste in containers on-site for 90 days or less without a permit. 401 KAR § 35:030(5)(1).

75. A "container" is any portable device in which hazardous waste is transported, stored, treated or otherwise handled. 401 KAR § 35:005(45).

76. A container that at one time held hazardous waste is considered "empty" if all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, and if no more than one inch of residue remains on the bottom of the container. 401 KAR § 31:010(7)(2)(a).

77. In December 2003 or January 2004 Defendant stopped utilizing and tagged as "out of service" a small container (the "Container") which had been used to collect waste drained from Boiler 100's burner nozzles.

78. At the time of the NEIC Inspection, the Container contained waste residue and was not "empty" within the meaning of 401 KAR § 31:010(7)(2)(a). The waste residue in the Container had been there since December 2003 or January 2004.

79. The Container was not emptied until April 2005.

80. By retaining waste residue in the Container for longer than 90 days Defendant stored hazardous waste without a permit in violation of 401 KAR § 38:010(1)(2). Each day that Defendant stored hazardous waste in the Container without a permit is a separate violation of 401 KAR § 38:010(1)(2).

81. Violations of 401 KAR § 38:010(1)(2) are enforceable by EPA under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

82. As provided in Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

SEVENTH CLAIM FOR RELIEF
(Violations of RCRA Personnel Training Requirements:
Failure to Provide Adequate and Timely Training)

83. Paragraphs 1 through 19 are incorporated herein.

84. Kentucky has received authorization from EPA to administer its hazardous waste management program in lieu of the RCRA facility requirements found at 40 C.F.R. Part 264.

85. Pursuant to Section II.B.4 of the Kentucky RCRA Permit, the Louisville Plant must be operated in accordance with the Personnel Training regulations found at 401 KAR §34:020(7).

86. Pursuant to the Kentucky Personnel Training regulations, a facility's emergency response training program must be designed to ensure that employees are familiarized with emergency procedures, equipment and systems, and all employees must take part in an annual review of the facility's emergency response training program. 401 KAR §§ 34:020(7) (1)(c) and (3).

87. Defendant failed to provide an emergency response training program adequate to familiarize all employees with emergency procedures, equipment and systems at the Louisville Plant, and failed to ensure that all employees received timely annual review of the training program.

88. Each day that Defendant maintained a training program that was not designed to ensure that employees are familiar with emergency procedures, equipment and systems, and each instance in which Defendant failed to provide an employee with timely annual review of the emergency response program in a timely fashion, is a separate violation of Section II.B.4 of the Kentucky RCRA Permit.

89. Violations of the Kentucky RCRA Permit are enforceable by EPA under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

90. As provided in Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

EIGHTH CLAIM FOR RELIEF
(Violations of CERCLA and EPCRA Release Notification Requirements)

91. Paragraphs 1 through 19 are incorporated herein.

92. Pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), any person in charge of an onshore facility shall immediately notify the National Response Center (“NRC”) as soon as he or she has knowledge that a hazardous substance has been released from that facility in quantities equal to or greater than its reportable quantity.

93. At all times pertinent to this action the Louisville Plant was an “onshore facility” within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

94. 1,3-butadiene is a listed hazardous substance with a reportable quantity of 10 pounds under 40 C.F.R. § 302.4.

95. Pursuant to Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. § 355.40, the owner or operator of a facility at which a hazardous substance is produced, used or stored must immediately provide notice to the appropriate Local Emergency Planning Committee (“LEPC”) and State Emergency Planning

Commission ("SEPC") if a release of that substance in quantities equal to or greater than its reportable quantity occurs, and if such a release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

96. At all times pertinent to this action, the Louisville Plant was a "facility" within the meaning of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. § 355.40, at which 1,3-butadiene was produced, used or stored.

97. 1,3-butadiene is a listed hazardous substance under 40 C.F.R. § 302.4, and any release equal to or in excess of its reportable quantity of 10 pounds requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

98. Releases of 1,3-butadiene in excess of 10 pounds occurred on June 4, 2002 and January 29, 2003. In each instance, Defendant failed to immediately notify the NRC, LEPC and SEPC.

99. Each failure to immediately notify the NRC as soon as the person in charge of the Louisville Plant had knowledge of the release of a hazardous substance equal to or in excess of its reportable quantity is a separate violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

100. Each failure to immediately notify the LEPC, and each failure to immediately notify the SEPC, upon release of a hazardous substance in excess of its reportable quantity when that release is reportable under Section 103(a) of CERCLA, 42

U.S.C. § 9603(a), is a separate violation of Section 304(a)(3) of EPCRA, 42 U.S.C. § 11004(a)(3).

101. As provided in Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), the violations set forth above subject Defendant to a civil penalty of up to \$27,500 per day for an initial violation occurring before March 16, 2004, and \$32,500 per day for an initial violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004). In the case of a second or subsequent violation, the violations set forth above subject Defendant to a civil penalty of up to \$82,500 per day for each violation occurring before March 16, 2004, and \$97,500 per day for each violation occurring on or after March 16, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 69 Fed. Reg. 7,121 (Feb. 13, 2004).

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, the United States of America requests that this Court:

1. Order Defendant expeditiously to achieve and demonstrate, and thereafter maintain, compliance at the Louisville Plant with the CAA, RCRA, CERCLA, EPCRA and federal and state regulations promulgated pursuant thereto;

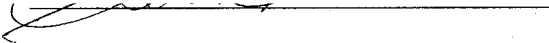
2. Enjoin Defendant from operating the Louisville Plant in violation of the CAA, RCRA, CERCLA, EPCRA and federal and state regulations promulgated pursuant thereto;

3. Order Defendant to pay a civil penalty of up to \$27,500 per day for each violation of the CAA, RCRA, CERCLA, EPCRA and federal and state regulations promulgated pursuant thereto occurring before March 16, 2004, and \$32,500 per day for each violation occurring on or after March 16, 2004;

4. Award the United States its costs and fees in this action; and

5. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,


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By: _____

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